

Remarks

I. 35 USC 102

1. Claims 11, 13, 16 and 17 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 3,450,437 to McQueen. The Final Rejection states:

McQueen shows a vehicle having a support member 1, bed 10 coupled to the support member, movable in a first direction relative to the vehicle and pivotable about a point adjacent to the rear edge of the support member; and arms 31 coupled to the support member via rollers 33-34 and to the bed "at to the front end" as broadly claimed, the arms moving linearly as they and the bed roll along the support member in the first direction until the rollers encounter stops 41 which cause the arms to pivot and thus tilt the bed relative to the vehicle, as seen in figure 1.

Applicant respectfully disagrees with the assertion that McQueen discloses "the arms moving linearly as they and the bed roll along the support member in the first direction until the rollers encounter stops 41 which cause the arms to pivot and thus tilt the bed relative to the vehicle." Instead McQueen states in column 2, lines 43-55:

From the foregoing it will be apparent that a rearward pull on cable 25, shaft 30 and rollers 33-34 upon rotation of the shaft and winch 24 by crank handle will pull the lift arms 31-32 rearwardly from their full line position shown in FIGURE 1. The resultant upward swing of the lift arms about the hinge line established by the shaft 18 as they travel rearwardly along the truck bed will tilt the dump box into the dumping position shown in broken lines or to any desired intermediate position such, for example, as one where the dump body would be only partially extended from the rear of the truck body while still in a horizontal position for loading purposes.

A glance at FIG. 1 of McQueen also demonstrates that the arms of that reference do not "tilt the bed relative to the vehicle." Instead, the bed of McQueen would appear to tilt as the weight of the bed moved past the rollers 16. The arms of McQueen would appear to restrain that tilting, in contrast to amended claim 11.

Claim 11 was amended to recite, in part: "an arm coupled to the support member and coupled to the bed at the front end." This is in contrast to McQueen, which shows a pair of lifting arms 31-32 that are attached near a middle of the main body 8.

In response to this amendment and argument, the Final Rejection states:

Applicant argues that McQueen shows the lifting arms attached near the middle of the support member. While this may be true, they are

nevertheless clearly coupled to the front portion of the bed, assuming the bed is evenly divided into front and rear portions. Nothing in applicants claim sets forth the structure of the bed with sufficient specificity as to preclude such an interpretation. Furthermore, even if the claims were amended so as to more precisely define the location of the arms, modifying McQueen to include such a limitation would have been a mere design expediency.

Initially note that applicant did not state that “McQueen shows the lifting arms attached near the middle of the support member,” but instead that “McQueen... shows a pair of lifting arms 31-32 that are attached near a middle of the main body 8.”

This is in contrast to claim 11, which recites, in part: “an arm coupled to the support member and coupled to the bed at the front end” of the bed. Applicant respectfully but strongly asserts that McQueen does not disclose an arm coupled to the bed at the front end of the bed.

Applicant also respectfully but strongly disagrees with the Final Rejection that “modifying McQueen to include such a limitation would have been a mere design expediency.” Should McQueen be modified as suggested by the Final Rejection, the modified device would not work. This can be seen by imagining that FIG. 1 of McQueen showed arm 31 attached at the front of the main body 8 near forcing band 14, so that arm 31 would be much shorter and substantially vertical in orientation. As the bed traveled rearward it would be constrained from tilting by the substantially vertical arm 31, defeating the object of McQueen as a dump body.

2. Claims 11 and 16 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,077,024 to Trueblood. The Final Rejection states:

Trueblood shows a vehicle having a support surface 15, 25, bed 11, and arms 21, 23 coupled, at least indirectly, to the support member at one end and to the front end of the bed, and which are constrained to move linearly at a first location of the vehicle to move the bed in the first direction and are constrained to rotary motion at a second location of the vehicle to tilt the bed, as seen in figures 8b and 8c.

Applicant previously amended claim 11 to recite that the bed is disposed above the support member during the substantially linear motion. This is in contrast to

Trueblood, which shows lever 21 and link 23 mounted near the top of its side-walls to guide tracks 47 and 55.

In response to this amendment and argument, the Final Rejection states:

Applicant argues that Trueblood fails to show that the bed is disposed above the support member, asserting that the arms are mounted near the top of the side walls. Again, while this is true, the claims are not so limiting as to preclude the support member from including not only the horizontal surface 15, 25 of the vehicle, above which the bed is clearly disposed, but also the side walls. Thus, as previously set forth, the arms are at least indirectly coupled to the support surface, even though the bed is not disposed above the portion of the support surface to which the arms are coupled. Just as applicant argues that the recitation of “an arm” does not limit the claims to a single arm, the recitation of “a support member” does not limit the claims to a single support member.

Applicant respectfully but strongly disagrees with the Final Rejection interpretation of Trueblood as disclosing a support member to which an arm is coupled, with a bed disposed above the support member during the substantially linear motion. To arrive at this interpretation, the Final Rejection divides the support member into a “horizontal surface 15, 25 of the vehicle,” and “side walls.” The Final Rejection admits that “the bed is not disposed above the portion of the support surface to which the arms are coupled,” i.e., the side walls. The Final states, however, that the recitation of “a support member” does not limit the claims to a single support member.

While applicant agrees that claim 11 is not limited to a single support member, that claim does include the limitation of “an arm coupled to the support member ... with the bed disposed above the support member during the substantially linear motion.” Thus, it is error to point to two alleged support members, one of which the arm is coupled to but the bed is not disposed above, and the other of which the arm is not coupled to, to attempt to meet the limitation of claim 11.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*.

Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added).

The Final Rejection's reasoning that "the arms are at least indirectly coupled to ...the horizontal support surface," removes all meaning from claim 11 if logically extended, because everything in that claim would then be considered to be indirectly coupled to everything else, essentially ignoring numerous limitations of that claim. For example, claim 11 in part recites 1) "a bed coupled to the support member" and 2) "an arm coupled to the support member and coupled to the bed." Given the Final Rejection's reasoning, the limitation of "an arm ...coupled to the bed" is meaningless, since the claim has already recited "a bed coupled to the support member" and "an arm coupled to the support member." Therefore, the Final Rejection's interpretation of Trueblood ignores at least one material limitation of claim 11, and so a prima facie case of anticipation has not been made.

II. 35 USC 103

1. Claims 12-15 and 17 stand rejected under 35 USC 103(a) as being unpatentable over Trueblood in view of U.S. Patent No. 6,099,232 to Dixon et al. The Final Rejection states:

Trueblood does not show the support member moveable relative to the vehicle.

Dixon et al. show a vehicle having a moveable support member 130 coupled to and moveable in a first direction relative to frame 120, bed 110, 112 moveable adjacent the upper surface of the support member in the first direction and pivotable about an axis adjacent the rear edge of the support member, and arms 136 coupled to the bed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the apparatus of Trueblood by utilizing a moveable support member, as shown by Dixon et al., for greater efficiency and flexibility during loading and unloading.

Initially note that, as mentioned above, Trueblood is also lacking "an arm coupled to the support member ... with the bed disposed above the support member during the substantially linear motion," as recited in claim 11. As noted in applicant's prior response, Trueblood shows lever 23 and link 21 mounted near the top of the side-walls to guide tracks 47 and 55. The Final Rejection has not presented any showing that Dixon et al. teach this limitation, and the Final Rejection has not presented any incentive for

modifying Trueblood to arrive at this limitation, so the Final Rejection has not presented a prima facie case of obviousness of claim 11 over Dixon et al. in view of Trueblood.

Also note that, as mentioned above, FIG. 1 of McQueen also demonstrates that the arms of that reference do not “tilt the bed relative to the vehicle,” as recited in claim 11. Instead, the bed of McQueen would appear to tilt as the weight of the bed moved past the rollers 16. The arms of McQueen would appear to restrain that tilting, in contrast to claim 11. Thus, McQueen teaches away from amended claim 11.

A prior art reference may be considered to teach away when “a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).

Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 45 USPQ 2d 1977, 1984 (Fed. Cir. 1998).

We have noted elsewhere, as a “useful general rule,” that references that teach away cannot serve to create a prima facie case of obviousness. *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1131, 1132 (Fed. Cir. 1994).

McGinley v. Franklin Sports Inc., 60 USPQ 2d 1001, 1100 (Fed. Cir. 2001).

Claim 11 has also been amended to recite “an arm coupled to the support member and coupled to the bed at the front end.” This is in contrast to Trueblood, which shows lever 23 coupled to the side of the box 11 and removed from the front end of that invention. As shown in Figs. 4a-4c of Trueblood, it is preferable for the lever 23 to be removed from the front end to avoid a sharp angle between lever 23 and link 21 during the initial lifting of box 11 (Fig. 4a) and yet allow wedge-shaped lever 21 to keep the box from catching the tail gate (Fig. 4c). For this reason also the Final Rejection has not presented a prima facie case of obviousness of claim 11 over Trueblood in view of Dixon et al.

The Final Rejection’s proposed incentive for modifying the apparatus of Trueblood “by utilizing a moveable support member, as shown by Dixon et al.” is also lacking. The Final Rejection states that this would be done “for greater efficiency and flexibility during loading and unloading,” however, such an incentive is not found in either of the references. The Final Rejection thus ignores the need for any specific hint or

suggestion in a particular reference to support the modification proposed by the Final Rejection, and has failed to present a prima facie case of obviousness for this reason also (see, e.g., In re Lee, 61 USPQ2d1430, 1434 (Fed. Cir. 2002)).

For at least these reasons, claims 11-17 are nonobvious over Dixon et al. in view of Trueblood.

2. Claims 12 and 15 stand rejected under 35 USC 103(a) as being unpatentable over McQueen in view of Dixon et al. The Final Rejection states:

McQueen does not show the support member moveable relative to the vehicle.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the apparatus of McQueen by utilizing a moveable support member, as shown by Dixon et al., for greater efficiency and flexibility during loading and unloading.

It would not have been clear to one of skill in the art how to modify the apparatus of McQueen by utilizing a moveable support member, as shown by Dixon et al., or that greater efficiency and more flexibility would result.

Claim 11 recites in part, “an arm coupled to the support member and coupled to the bed at the front end.” McQueen does not teach or suggest this limitation, instead showing arms 31-32 that are removed from the front end. Applicant also respectfully but strongly disagrees with the Final Rejection that “modifying McQueen to include such a limitation would have been a mere design expediency.” Should McQueen be modified as suggested by the Final Rejection, the modified device would not work. This can be seen by imagining that FIG. 1 of McQueen showed arm 31 attached at the front of the main body 8 near forcing band 14, so that arm 31 would be much shorter and substantially vertical in orientation. As the bed traveled rearward it would be constrained from tilting by the substantially vertical arm 31, defeating the object of McQueen as a dump body. In this regard, McQueen teaches away from the modification proposed by the Final Rejection.

Dixon et al. teach rails 136 coupled to the bottom of the bed. The rails 136 of Dixon et al. would not have been attached at the front of the bed by one of ordinary skill in the art, as proposed by the Final Rejection, because the ramp then either could not be

inclined or could not fit into the front of the pickup truck bed. Thus Dixon et al. also teaches away from this limitation, as the rails 136 of Dixon et al. need to slide along ramp beams 134 to function.

Also note that, as mentioned above, FIG. 1 of McQueen also demonstrates that the arms of that reference do not "tilt the bed relative to the vehicle," as recited in claim 11. Instead, the bed of McQueen would appear to tilt as the weight of the bed moved past the rollers 16. The arms of McQueen would appear to restrain that tilting, in contrast to claim 11. Dixon et al. also teaches that the front end its ramp is raised by gravity tipping the back end down once the bed or box extends sufficiently beyond the end of the truck., and the rails of that reference do not tilt the ramp relative to the vehicle but restrain it from tilting. For this reason also, both McQueen and Dixon et al. teach away from amended claim 11.

For at least these reasons, claims 11-17 are nonobvious over McQueen in view of Dixon et al.

III. Allowed Claims

Applicant appreciates the allowance of claims 1 and 3-10.

IV. Conclusion

Applicants respectfully request reconsideration of the claims at issue in view of the above Remarks. Applicant believes that the claims are in condition for allowance, and a Notice of Allowance is solicited. Should the Examiner have any question regarding this application or amendment, he is respectfully requested to telephone the undersigned at the number below.

Respectfully submitted,

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 26, 2004.

Date: 4-26-04


Mark Lauer



Mark Lauer
Reg. No. 36,578
6601 Koll Center Parkway
Suite 245
Pleasanton, CA 94566
Tel: (925) 484-9295
Fax: (925) 484-9291